

Senate Study Bill 1238 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON SODDERS)

A BILL FOR

1 An Act relating to fiduciary access to digital assets and
2 including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **633.90 Power of a fiduciary to**
2 **access digital assets and digital accounts.**

3 Except as modified by a court order or limited in the
4 instrument creating the fiduciary relationship, a fiduciary may
5 exercise all rights and powers granted to a fiduciary under
6 chapter 633F.

7 Sec. 2. Section 633A.4402, Code 2015, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 33. Exercise all rights and powers granted
10 to a fiduciary under chapter 633F.

11 Sec. 3. Section 633B.201, subsection 1, Code 2015, is
12 amended by adding the following new paragraph:

13 NEW PARAGRAPH. *i.* Exercise all rights and powers granted to
14 a fiduciary under chapter 633F.

15 Sec. 4. NEW SECTION. **633F.1 Short title.**

16 This chapter shall be known and may be cited as the "*Iowa*
17 *Uniform Fiduciary Access to Digital Assets Act*".

18 Sec. 5. NEW SECTION. **633F.2 Definitions.**

19 For purposes of this chapter unless the context requires
20 otherwise:

21 1. "*Account*" means a digital asset of an account holder
22 assigned a unique account identifier or tied to one or more
23 pieces of verified identifying information of an account
24 holder.

25 2. "*Account holder*" means a person who has entered into
26 a terms-of-service agreement with a custodian. A fiduciary
27 for that person shall also be deemed to be an account holder,
28 subject to the provisions of this chapter.

29 3. "*Agent*" means a person granted authority under a durable
30 or nondurable power of attorney valid under chapter 633B.

31 4. "*Carries*" means engages in the transmission of electronic
32 communications.

33 5. "*Catalogue of electronic communications*" means information
34 that identifies each person with which an account holder has
35 had an electronic communication, the time and date of the

1 communication, and the electronic address of the person.

2 6. "*Conservator*" means the same as defined in section 633.3,
3 and includes a limited conservator, unless otherwise provided
4 by order of the court.

5 7. "*Content of an electronic communication*" means information
6 concerning the substance or meaning of the communication which
7 is characterized by all of the following:

8 a. Has been sent or received by the account holder.

9 b. Is in electronic storage by a custodian providing a
10 remote-computing service to the public.

11 c. Is not readily accessible to the public.

12 8. "*Court*" means any district court or appellate court of
13 this state.

14 9. "*Custodian*" means a person that carries, maintains,
15 processes, receives, or stores a digital asset of an account
16 holder.

17 10. "*Digital asset*" means a record that is electronic.

18 "*Digital asset*" does not include an underlying asset or
19 liability unless the asset or liability is itself a record
20 that is electronic. "*Digital asset*" does not include health
21 information or individually identifiable health information as
22 those terms are defined in section 1171 of Part C of Subtitle F
23 of the federal Health Insurance Portability and Accountability
24 Act of 1996, Pub. L. No. 104-191, as amended.

25 11. "*Electronic*" means relating to technology having
26 electrical, digital, magnetic, wireless, optical,
27 electromagnetic, or similar capabilities.

28 12. "*Electronic communication*" means the same as defined in
29 18 U.S.C. §2510(12).

30 13. "*Electronic-communication service*" means a custodian
31 that provides to an account holder the ability to send or
32 receive an electronic communication.

33 14. "*Fiduciary*" means an agent, conservator, guardian,
34 personal representative, or trustee.

35 15. "*Guardian*" means the same as defined in section 633.3.

1 *"Guardian"* includes a limited guardian, unless otherwise
2 provided by order of the court.

3 16. *"Information"* means data, text, images, videos, sounds,
4 codes, computer programs, software, databases, or the like.

5 17. *"Person"* means an individual, estate, business
6 or nonprofit entity, public corporation, government or
7 governmental subdivision, agency, or instrumentality, or other
8 legal entity.

9 18. *"Personal representative"* means the same as defined in
10 section 633.3.

11 19. *"Power of attorney"* means a record that grants an agent
12 authority to act in the place of a principal.

13 20. *"Principal"* means an individual who grants authority to
14 an agent in a power of attorney valid under chapter 633B.

15 21. *"Record"* means information that is inscribed on a
16 tangible medium or that is stored in an electronic or other
17 medium and is retrievable in a perceivable form.

18 22. *"Remote-computing service"* means a custodian that
19 provides to the public computer processing services or
20 the storage of digital assets by means of an electronic
21 communications system, as defined in 18 U.S.C. §2510(14).

22 23. *"Terms-of-service agreement"* means an agreement that
23 controls the relationship between an account holder and a
24 custodian.

25 24. *"Trustee"* means the same as defined in section 633.3 or
26 633A.1102.

27 25. *"Ward"* means a person for whom a guardian has been
28 appointed, or a person whose property is under control of a
29 conservator appointed by a court. *"Ward"* includes a person
30 for whom an application for the appointment of a guardian or
31 conservator is pending and for which a court order authorizing
32 access has been granted.

33 26. *"Will"* includes the same as defined in section 633.3.

34 **Sec. 6. NEW SECTION. 633F.3 Applicability.**

35 1. This chapter applies to all of the following:

1 *a.* A fiduciary or agent acting under a will or power of
2 attorney executed before, on, or after the effective date of
3 this Act.

4 *b.* A personal representative acting for a decedent who dies
5 before, on, or after the effective date of this Act.

6 *c.* A conservator or guardian acting for a ward on or after
7 the effective date of this Act.

8 *d.* A trustee acting under a trust created before, on, or
9 after the effective date of this Act.

10 2. This Act does not apply to a digital asset of an employer
11 used by an employee in the ordinary course of the employer's
12 business.

13 Sec. 7. NEW SECTION. **633F.4 Access by personal**
14 **representative to digital assets of decedent.**

15 1. Subject to subsection 2 and section 633F.8, subsection
16 2, unless expressly prohibited in writing by the decedent, if
17 appointed by a court with jurisdiction over the estate of a
18 decedent or expressly permitted by the will of a decedent, a
19 personal representative of the decedent has the right to access
20 an account of a decedent to obtain any of the following:

21 *a.* The content of an electronic communication that the
22 custodian is permitted to disclose under the federal Electronic
23 Communications Privacy Act, 18 U.S.C. §2702(b), as amended.

24 *b.* Any catalogue of electronic communications sent or
25 received by the decedent.

26 *c.* Any other digital asset in which the decedent at death
27 had a right or interest.

28 2. If the decedent was not the sole owner or authorized
29 user of the account and the account's contents, the personal
30 representative shall obtain written authorization from each
31 other account holder, owner, or user authorized to modify the
32 contents of the accounts as identified by the custodian, before
33 being granted access under this section.

34 3. For purposes of this section, a successor of a decedent
35 as defined in section 633.356 shall be deemed to be a duly

1 appointed personal representative.

2 Sec. 8. NEW SECTION. 633F.5 Access by conservator or
3 guardian to digital assets of ward.

4 1. Subject to subsection 2 and section 633F.8, subsection 2,
5 a court with personal jurisdiction over a ward, after providing
6 an opportunity for hearing to all interested parties, may grant
7 a duly appointed conservator or guardian the right to access an
8 account of the ward to obtain any of the following:

9 a. The content of an electronic communication that the
10 custodian is permitted to disclose under the federal Electronic
11 Communications Privacy Act, 18 U.S.C. §2702(b), as amended.

12 b. A catalogue of electronic communications sent or received
13 by the ward.

14 c. A digital asset in which the ward has a right or
15 interest.

16 2. If the ward is not the sole owner or authorized user
17 of the accounts and the account's contents, the conservator
18 or guardian shall obtain written authorization from each
19 other account holder, owner, or user authorized to modify the
20 contents of the account, as identified by the custodian before
21 being granted access under this section.

22 Sec. 9. NEW SECTION. 633F.6 Access by agent to digital
23 assets of principal.

24 1. To the extent a power of attorney expressly grants
25 authority to an agent over the content of an account of the
26 principal and subject to section 633F.8, subsection 2, the
27 agent has the right to access the account of the principal to
28 obtain the content of an electronic communication that the
29 custodian is permitted to disclose under the federal Electronic
30 Communications Privacy Act, 18 U.S.C. §2702(b), as amended,
31 provided that the principal is the sole owner and authorized
32 users of the account. If the principal is not the sole owner or
33 authorized user of the account and the account's contents, the
34 agent must obtain written authorization from each other account
35 holder, owner, or user authorized to modify the contents of the

1 account, as identified by the custodian before being granted
2 access under this section.

3 2. Subject to section 633F.8, subsection 2, and except as
4 provided in subsection 1, and unless otherwise provided by
5 a power of attorney or the court, an agent has the right to
6 access all of the following:

7 a. A catalogue of electronic communications sent or received
8 by the principal.

9 b. A digital asset in which the principal has a right or
10 interest.

11 Sec. 10. NEW SECTION. 633F.7 Access by trustee to digital
12 assets.

13 1. Subject to subsection 3 and section 633F.8, subsection
14 2, and unless otherwise ordered by the court or provided by
15 the settlor in the terms of a trust, a trustee or a successor
16 trustee that is an original account holder has the right to
17 access any digital asset held in trust, including the catalogue
18 of electronic communications of the trustee and the content of
19 an electronic communication.

20 2. Subject to subsection 3 and section 633F.8, subsection 2,
21 and unless otherwise ordered by the court or provided by the
22 terms of a trust, a trustee that is not an original account
23 holder has the right to access all of the following:

24 a. The content of an electronic communication that the
25 custodian is permitted to disclose under the federal Electronic
26 Communications Privacy Act, 18 U.S.C. §2702(b), as amended.

27 b. A catalogue of electronic communications sent or received
28 by the original or any successor account holder.

29 c. Any other digital asset in which the original or any
30 successor account holder has a right or interest.

31 3. If the settlor was not the sole owner or authorized
32 user of the account and the account's contents, the trustee or
33 successor trustee shall obtain written authorization from each
34 other account holder, owner, or user authorized to modify the
35 contents of the account, as identified by the custodian before

1 being granted access under this section.

2 Sec. 11. NEW SECTION. **633F.8 Fiduciary authority.**

3 1. A fiduciary that is an account holder or has the right
4 under section 633F.4, 633F.5, 633F.6, or 633F.7 to access a
5 digital asset of an account holder:

6 *a.* Subject to the terms-of-service agreement, copyright law,
7 and other applicable law, may take any action concerning the
8 asset to the extent of the account holder's authority and the
9 fiduciary's power under the laws of this state.

10 *b.* Has, for the purpose of applicable electronic privacy
11 laws, the lawful consent of the account holder for the
12 custodian to divulge the content of an electronic communication
13 to the fiduciary.

14 *c.* Is an authorized user for the purpose of applicable Iowa
15 and federal computer fraud and unauthorized computer-access
16 laws.

17 2. Unless an account holder, after the effective date of
18 this Act agrees to a provision in a terms-of-service agreement
19 that limits a fiduciary's access to a digital asset of the
20 account holder by an affirmative act separate from the account
21 holder's assent to other provisions of the agreement, the
22 following apply:

23 *a.* A provision in the general terms-of-service agreement
24 that limits the fiduciary's access to a digital asset of the
25 account holder is void against the public policy of this state.

26 *b.* A fiduciary's access under this chapter to a digital
27 asset does not violate the terms-of-service agreement even
28 if the agreement requires notice of a change in the account
29 holder's status.

30 3. A choice-of-law provision in a terms-of-service
31 agreement is unenforceable against a fiduciary acting
32 under this chapter to the extent the provision in the
33 terms-of-service agreement provides a choice of law that
34 enforces a limitation on a fiduciary's access to a digital
35 asset, and the limitation is void under subsection 2.

1 4. Subject to fiduciary duties imposed by the law of
2 this state, as to tangible personal property capable of
3 receiving, storing, processing, or sending a digital asset, a
4 fiduciary with authority over the property of a decedent, ward,
5 principal, or settlor, after receiving written permission from
6 each living account holder, owner, user authorized to modify
7 the contents of the property as identified on the property,
8 ward, principal, or settlor, has the right to access the
9 property and any digital asset stored in the property.

10 Sec. 12. NEW SECTION. **633F.9 Compliance.**

11 1. If a fiduciary with a right under this chapter to access
12 a digital asset of an account holder complies with subsection
13 2, the custodian shall comply with the fiduciary's request in a
14 record for each of the following:

15 a. Access to the digital asset.

16 b. Control of the digital asset.

17 c. A copy of the digital asset to the extent permitted by
18 copyright law.

19 2. If a request under subsection 1 is made by any of the
20 following, the following requirements apply:

21 a. If made by a personal representative with a right of
22 access under section 633F.4, the request must be accompanied
23 by a certified copy of the death certificate, the letters
24 of appointment of the representative, and an affidavit for
25 distribution of property made pursuant to section 633.356, or
26 court order.

27 b. If made by a conservator or guardian with the right of
28 access under section 633F.5, the request must be accompanied by
29 a certified copy of the court order that grants the conservator
30 or guardian authority over the digital asset.

31 c. If made by an agent with the right of access under
32 section 633F.6, the request must be accompanied by an original
33 or a copy of the power of attorney that authorizes the agent to
34 exercise authority over the digital asset and a certification
35 of the agent, under penalty of perjury, that the power of

1 attorney is in effect.

2 *d.* If made by a trustee with the right of access under
3 section 633F.7, the request must be accompanied by a certified
4 copy of the trust instrument or a certification of trust under
5 section 633A.4604 that authorizes the trustee to exercise
6 authority over the digital asset.

7 3. A custodian shall comply with a request made under
8 subsection 1 not later than thirty days after receipt. If the
9 custodian fails to comply, the fiduciary may apply to the court
10 for an order directing compliance. If the court finds that the
11 custodian has willfully failed to comply with a valid request,
12 the court may award the fiduciary damages sustained by the
13 fiduciary as a result of the willful noncompliance, costs of
14 the action, and reasonable attorney fees as determined by the
15 court.

16 4. If a certification of trust is provided under subsection
17 2, paragraph “*d*”, the certification need not contain the
18 dispositive terms of the trust but must contain each of the
19 following statements or information:

20 *a.* That the trust exists and the date the trust instrument
21 was executed.

22 *b.* The identity of the settlor.

23 *c.* The identity and address of the trustee.

24 *d.* That there is nothing inconsistent in the trust with
25 respect to the trustee’s powers over digital assets.

26 *e.* Whether the trust is revocable and the identity of any
27 person holding a power to revoke the trust.

28 *f.* Whether a cotrustee has authority to sign or otherwise
29 authenticate, and whether all or fewer than all cotrustees are
30 required to exercise powers of the trustee.

31 *g.* That it is signed or otherwise authenticated by a
32 trustee.

33 *h.* That the trust has not been revoked, modified, or amended
34 in a manner that would cause the representations contained in
35 the certification of trust to be incorrect.

1 5. A custodian that receives a certification of trust
2 under subsection 4 may require the trustee to provide copies
3 of excerpts from the original trust instrument and later
4 amendments designating the trustee and conferring on the
5 trustee the power to act in the pending transaction.

6 6. A custodian that acts in reliance on a certification
7 of trust under subsection 4 without knowledge that the
8 representations contained in the certification are incorrect
9 is not liable to any person for so acting and may assume
10 without further inquiry the existence of facts stated in the
11 certification.

12 7. A person that, in good faith, enters into a transaction
13 in reliance on a certification of trust under subsection 4 may
14 enforce the transaction against the trust property as if the
15 representations contained in the certification were correct.

16 8. A person that demands the trust instrument in addition to
17 a certification of trust under subsection 4 or excerpts under
18 subsection 5 is liable for damages and reasonable attorney fees
19 and costs incurred by the trustee or trust beneficiaries, if
20 the court determines that the person did not act reasonably in
21 requesting the trust instrument.

22 9. This section does not limited the right of a person to
23 obtain a copy of a trust instrument in a judicial proceeding
24 concerning the trust.

25 Sec. 13. NEW SECTION. 633F.10 Custodian immunity.

26 A custodian and the custodian's officers, employees, and
27 agents are immune from liability for an act or omission done in
28 good faith in compliance with this chapter.

29 Sec. 14. NEW SECTION. 633F.11 Uniformity of application
30 and construction.

31 In applying and construing this chapter, consideration must
32 be given to the need to promote uniformity of the law with
33 respect to its subject matter among states that enact the
34 uniform fiduciary access to digital assets act.

35 Sec. 15. NEW SECTION. 633F.12 Relation to Electronic

1 **Signatures in Global and National Commerce Act.**

2 This chapter modifies, limits, or supersedes the federal
3 Electronic Signatures in Global and National Commerce Act, 15
4 U.S.C. §7001 et seq., but does not modify, limit, or supersede
5 section 101(c) of that Act, 15 U.S.C. §7001(c), or authorize
6 electronic delivery of any of the notices described in section
7 103(b) of that Act, 15 U.S.C. §7003(b).

8 **EXPLANATION**

9 The inclusion of this explanation does not constitute agreement with
10 the explanation's substance by the members of the general assembly.

11 This bill relates to fiduciary access to digital assets and
12 includes applicability provisions.

13 The bill defines a "fiduciary" as an agent under a power
14 of attorney pursuant to Code chapter 633B, a conservator,
15 guardian, personal representative, or trustee as each is
16 defined under Code section 633.3, or a trustee as defined in
17 Code section 633A.1102. The bill defines a "digital asset"
18 as a record that is electronic, excluding an underlying
19 asset or liability unless the asset or liability is itself an
20 electronic record. "Digital asset" does not include "health
21 information" or "individually identifiable health information"
22 as those terms are defined under the federal Health Insurance
23 Portability and Accountability Act. The bill defines
24 "custodian" as a person that carries, maintains, processes,
25 receives, or stores a digital asset of an account holder.

26 The bill provides that if a fiduciary presents a custodian
27 with a valid written request, accompanied by the documentation
28 which establishes the relationship between the account holder
29 and the fiduciary, the custodian shall provide the fiduciary
30 access to or control of the digital asset. However, if the
31 account holder was not the sole owner or authorized user of
32 the account, the fiduciary shall obtain authorization from
33 the other owners or authorized users before the custodian is
34 required to provide the fiduciary access or control to the
35 digital asset.

1 The bill provides that a custodian, whom in good faith,
2 complies with a valid written request is immune from liability
3 for any action done in compliance with the bill.

4 The bill does not apply to an employer's digital assets which
5 an employee or contractor regularly uses in the usual course
6 of business.

7 The bill provides that a terms-of-service agreement which
8 purports to limit a fiduciary's access to a digital asset is
9 void unless the account holder agreed, after the effective date
10 of the bill, to the provision by an affirmative act separate
11 from assenting to the rest of the terms-of-service agreement.
12 A choice-of-law provision in a terms-of-service agreement which
13 designates law that would enforce a limitation on a fiduciary's
14 access to a digital asset is unenforceable against a fiduciary.

15 The bill provides applicability provisions. The bill
16 applies to a fiduciary acting under a will or an agent acting
17 under a power of attorney executed before, on, or after the
18 effective date of the bill. The bill applies to a personal
19 representative acting for a decedent who dies before, on, or
20 after the effective date of the bill. The bill applies to
21 a conservator or guardian acting for a ward on or after the
22 effective date of the bill. The bill applies to a trustee
23 acting under a trust created before, on, or after the effective
24 date of the bill.

25 The bill makes conforming changes.